

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

BERNICE MALCOLM,

Plaintiff,

DECISION AND ORDER

08-CV-6577L

v.

BOARD OF EDUCATION OF THE
HONEOYE FALLS-LIMA CENTRAL
SCHOOL DISTRICT, et al.,

Defendants.

On September 14, 2010, this Court issued a Decision and Order dismissing this action, with prejudice. (Dkt. #41). On September 28, 2010, the plaintiff filed a motion for reconsideration of that Decision and Order (Dkt. #43), and on October 19, 2010, she filed a Notice of Appeal from the resulting final judgment (Dkt. #42, #44).

“It is well settled that the filing of a *timely* and effective notice of appeal from a final judgment divests the court of jurisdiction to amend or otherwise reconsider that judgment.” *United States v. Katsougrakis*, 715 F.2d 769, 776-77 (2d Cir. 1983) (emphasis added). *See also Negron v. United States*, 2010 U.S. App. LEXIS 20363 at *9-*10 (2d Cir. 2010) (“[t]he filing of a notice of

appeal is an event of jurisdictional significance – it confers jurisdiction on the court of appeals and divests the district court of its control over those aspects of the case involved in the appeal”).


Here, plaintiff’s Notice of Appeal was filed thirty-three days after the entry of final judgment on September 16, 2010 (Dkt. #42), and is therefore untimely. *See* F.R. App. Proc. 4(a)(1)(A) (providing that in a civil case, the notice of appeal must be filed with the district court within 30 days after entry of the judgment or order appealed from).

Because plaintiff’s notice of appeal is untimely, it is not effective and therefore does not divest this Court of jurisdiction. I have reviewed plaintiff’s motion for reconsideration and find it to be without merit. There is no basis in law or fact for me to change, modify or reconsider my prior decision dismissing the action.

CONCLUSION

Plaintiff’s motion for reconsideration (Dkt. #43) is in all respects denied.

IT IS SO ORDERED.



DAVID G. LARIMER
United States District Judge

Dated: Rochester, New York
October 27, 2010.